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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MAY 17 2012

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA

v.

DONALD GIBSON II, and
SUNDAY JOSEPH EDEM
a/k/a JOSEPH E. JOSEPH
a/k/a/ JOSEPH EDEM
Defendants.

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CRIMINAL NO.:

H 12 - 306

**UNSEALED
PER ARREST**

CRIMINAL INDICTMENT

THE GRAND JURY CHARGES:

At all times material to this indictment:

General Allegations

1. The Medicare Program ("Medicare") was a federally funded health benefit program affecting commerce as defined in Title 18, United States Code, Section 24(b). The Center for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services, was responsible for implementing Medicare. CMS contracted with Trailblazers Health Enterprises, LLC to administer Medicare in Texas.

2. Medicare provided health benefits to individuals who were over the age of 65 or disabled. Individuals who received benefits under Medicare were commonly referred to as Medicare beneficiaries.

3. Medicare consisted of four main parts, Part A (Hospital), Part B (Physician/Outpatient Services), Part C (Medicare Advantage Plans) and Part D (Prescription Drug). Medicare Part B was a voluntary insurance program financed by premiums paid by enrollees and funds appropriated by the Federal government via payroll taxes.

4. Individuals with Medicare Part B were entitled, subject to certain conditions and requirements, to have payments made on their behalf for covered medical and health services.

5. Medicare covered diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests when ordered by the physician who was treating the beneficiary, that is, the physician who furnished a consultation or treated a beneficiary for a specific medical problem and who used the results in the management of the beneficiary's specific medical problem. Tests not ordered by the physician who was treating the beneficiary were not reasonable and necessary.

6. Allergy Skin testing was a clinical procedure that was used to evaluate immunologic response to allergenic material. Medicare covered allergy skin testing when the following criteria were met: 1) Testing must correlate specifically to the patient's history and physical findings; 2) The test technique and/or allergens tested must have proven efficacy demonstrated through scientifically valid medical studies published in peer-reviewed literature; and 3) Allergy testing must be

performed on patients whose environment provides the reasonable probability of exposure to the specific antigen tested.

7. Physical therapy services, covered by Medicare Part B, must be furnished by a qualified physical therapist, or an appropriately supervised physical therapist assistant, to a beneficiary who was under the care of a physician with a written plan of treatment. If the physical therapy was furnished by or incident to the service of a physician or nurse practitioner, the physician or nurse practitioner must be able to perform physical therapy services under state law.

8. Subject to a few exceptions, Medicare made payments for covered services, to the providers of services rather than to beneficiaries. Providers were required to be enrolled in Medicare and have a valid billing number.

9. The Texas Medicaid Program ("Medicaid") was a joint federal-state entitlement program. Medicaid provided medical benefits to eligible low-income families, pregnant women, children, individuals with disabilities and individuals 65 years of age or older with limited income. The Texas Health and Human Services Commission ("HHSC") was the single state agency with oversight responsibility for the Medicaid program in Texas. HHSC contracted with Texas Medicaid and Healthcare Partnership ("TMHP") to administer Medicaid in Texas.

10. When a Medicaid recipient was eligible for Medicare coverage, Medicaid paid the recipient's Medicare deductible and coinsurance liabilities, subject to program limitations, as a secondary insurance.

11. **DONALD GIBSON II, MD, ["GIBSON"]** was a resident of Texas and an internal medicine physician licensed by the Texas Medical Board. GIBSON was a Medicare provider and purportedly provided medical services in Harris and Fort Bend Counties.

12. **SUNDAY JOSEPH EDEM ["EDEM"]** was a resident of Texas. EDEM operated St. Joseph Diagnostic, St. Joseph Medical Clinic and Attentive Care Group. These entities purportedly provided medical services in Houston, Harris County Texas.

COUNT ONE
Conspiracy to Commit Health Care Fraud
(Violation of 18 U.S.C. § 1349)

1. Paragraphs 1 through 12 of the General Allegations Section of this Criminal Indictment are re-alleged and incorporated by reference as if fully set forth herein.

2. From in or about January 2007, through in or about January 2012, the exact dates being unknown, in the Houston division, within the Southern District of Texas and elsewhere, the defendants,

DONALD GIBSON II
and
SUNDAY JOSEPH EDEM,

did knowingly and willfully, combine, conspire, confederate and agree with each other and with other persons known and unknown to the Grand Jury, to violate Title 18 United States Code, Section 1347, that is, to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), namely Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of, said health care program, in connection with the delivery of and payment for health care benefits, items and services.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for defendants **DONALD GIBSON II** and **SUNDAY JOSEPH EDEM**, and others, to unlawfully enrich themselves by (a) submitting false and fraudulent claims to Medicare, (b) concealing the submission of false and fraudulent claims to Medicare and the receipt and transfer of the proceeds from the fraud; and (c) diverting proceeds of the fraud for personal use and benefit of the defendants and their co-conspirators.

Manner and Means of the Conspiracy

4. The manner and means by which the defendant sought to accomplish the purpose of the conspiracy included, among other things:

5. Defendant GIBSON, would and did hold himself out to the public as an internal medicine physician purportedly providing medical services to Medicare and Medicaid beneficiaries. GIBSON purportedly provided medical services at several medical clinics in the Houston Division of the Southern District of Texas.

6. Defendant GIBSON, would and did apply for and maintain a Medicare provider number in order to submit medical claims to the Medicare and Texas Medicaid Programs for reimbursement.

7. Defendant GIBSON, would and did routinely order, prescribe and purportedly perform medically unnecessary diagnostic tests and medical procedures including allergy tests, vestibular tests, urodynamics, heart and lung tests and physical therapy among others.

8. Defendant EDEM, would and did operate medical clinics in Houston, Harris County Texas. EDEM would and did conceal his financial and ownership interest in the businesses by having most of the business documents in the names of other individuals. Medicare patients purportedly received medical tests and procedures at the clinics operated by EDEM.

9. Defendants GIBSON and EDEM, would and did agree with each other to cause the submission of claims to the Medicare and Medicaid Programs through GIBSON's Medicare Provider number. Medicare would electronically deposit money into bank accounts owned and controlled by GIBSON. GIBSON would and did subsequently transfer proceeds to EDEM for his share.

10. Defendants GIBSON and EDEM, would and did submit and cause the submission of claims to Medicare for diagnostic tests and other procedures that were not medically necessary and in some instances not provided at all.

11. Defendants GIBSON and EDEM, would and did pay patient recruiters (a/k/a marketers or runners) for referring Medicare and Medicaid beneficiaries to medical clinics in which they had a financial interest.

12. Defendants GIBSON and EDEM, would and did offer and pay remuneration to induce Medicare and Medicaid beneficiaries to use certain medical providers and subsequently bill Medicare for medically unnecessary services.

13. From January 2007 thru July 2011, GIBSON would and did cause the submission of over \$19.4 million in claims through his Medicare Provider number. Medicare processed those claims and subsequently paid GIBSON approximately \$8.5 million.

All in violation of title 18, United States Code, Section 1349.

COUNTS TWO through THIRTEEN
Health Care Fraud
(Violation of 18 U.S.C. §§ 1347 and 2)

At all times material to this indictment:

1. Paragraphs 1 through 12 of the general allegations section are realleged and incorporated as though fully set forth herein.

2. Beginning on or about January 2007, defendants GIBSON and EDEM caused to be billed, and aided and abetted the billing of Medicare and Medicaid for medical procedures that were not performed and not medically necessary.

Purpose of the Scheme to Defraud

3. It was a purpose of the scheme to defraud for defendants DONALD GIBSON II and SUNDAY JOSEPH EDEM, and others, to unlawfully enrich themselves by (a) submitting false and fraudulent claims to Medicare, (b) concealing the submission of false and fraudulent claims to Medicare and the receipt and transfer of the proceeds from the fraud; and (c) diverting proceeds of the fraud for personal use and benefit of the defendants and their co-conspirators.

The Scheme and Artifice

4. Paragraphs 2 thru 13 of Count One of this Indictment are realleged and incorporated as though fully set forth herein.

Acts in Execution of the Scheme and Artifice

5. On or about the specified dates as to each count below, in the Houston Division of the Southern District of Texas and elsewhere, the defendants

DONALD GIBSON II
And
SUNDY JOSEPH EDEM

aided and abetted by each other and others known and unknown to the grand jury, in connection with the delivery of and payment for health care benefits, items and services, did knowingly and willfully execute and attempt to execute, the above described scheme and artifice to defraud a health care benefit program, that is Medicare and Medicaid, and to obtain, by means of materially false and fraudulent pretenses, representations and promises, money and property owned by and under the custody and control of said health benefit program:

Count	Defendant	Patient Initials and HIC#	Medicare Claim #	Approx Date of Service	Approx Claim Date	Procedure	Billed Amount
2	GIBSON	L.M. (*****7944A)	452908220668750	07/31/2008	08/07/2008	Allergy Test	420.00
3	GIBSON	L.M. (*****7944A)	452809268584310	09/14/2009	09/25/2009	Balance Test	100.00
4	GIBSON	L.M. (*****7944A)	452809268583480	09/15/2009	09/25/2009	Allergy Test	450.00
5	GIBSON	N.T. (*****5786A)	452810056610370	02/22/2010	02/25/2010	Electromyograph-TC & Prof	500.00
6	GIBSON	N.T. (*****5786A)	452810056610280	02/23/2010	02/25/2010	Allergy Test	450.00
7	GIBSON/ EDEM	L.E. (*****6653A)	452910082043040	03/16/2010	03/23/2010	Pulmonary Function Tests	310.00
8	GIBSON/ EDEM	L.E. (*****6653A)	452810091685640	03/25/2010	04/01/2010	Physical Therapy	150.15
9	GIBSON/ EDEM	R.C. (*****6610A)	452211132823490	05/06/2011	05/12/2011	Lung/Breathing Test	70.00
10	GIBSON/ EDEM	R.C. (*****6610A)	452211132823100	05/06/2011	05/12/2011	Electrocardiogram	50.00
11	GIBSON/ EDEM	R.C. (*****6610A)	452211132823470	05/06/2011	05/12/2011	Duplex Scan	300.00
12	GIBSON/ EDEM	J.T. (*****6956A)	452211152620600	05/18/2011	06/01/2011	Echocardiograph	350.00
13	GIBSON/ EDEM	J.T. (*****6956A)	452211152618990	05/19/2011	06/01/2011	Allergy Test	450.00

All in violation of Title 18, United States Code, Sections 1347 and 2.

NOTICE OF FORFEITURE
18 U.S.C. 982(a)(7)

Pursuant to Title 18, United States Code, Section 982(a)(7), the United States gives notice to defendants,

DONALD GIBSON II
and
SUNDAY JOSEPH EDEM,

That upon conviction of a Federal health care offense including conspiracy in violation of Title 18, United States Code, Section 1349 or of a violation of Title 18, United States Code, Section 1347, all property, real or personal that constitutes or is derived, directly or indirectly, from gross proceeds traceable to such offenses, is subject to forfeiture.

Money Judgment

Defendants are notified that upon conviction, a money judgment may be imposed equal to the total value of the property subject to forfeiture, for which the defendants may be jointly and severally liable.

Property Subject to Forfeiture

- 1) At least \$8.5 million in United States dollars

Substitute Assets

Defendants are notified that in the event the property subject to forfeiture, as a result of any act or omission of defendants,

- (a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

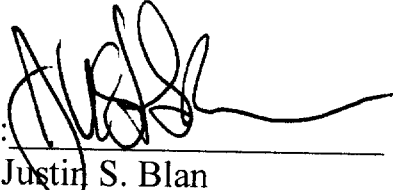
(E) has been commingled with other property that cannot be divided without difficulty,

the United States will seek to forfeit any other property of the defendants up to the total value of the property subject to forfeiture, pursuant to Title 21, United States Code, Section 853(p), and as incorporated by reference in title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 982(b)(1).

A TRUE BILL:

By: Original Signature on File
Foreperson of the Grand Jury

KENNETH MAGIDSON
UNITED STATES ATTORNEY
Southern District of Texas

By: 
Justin S. Blan
Special Assistant U.S. Attorney
713-567-9000